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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

FRG-16153

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Application Number

10/539139

Filed

August 18, 2005

First Named Inventor

Eberhard Harms

Art Unit

1797

Examiner

Denise R. Anderson

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

/James A. Balazs/

Signature

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

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May 26, 2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	:	10/539139	Confirmation No.	2263
Applicant	:	Eberhard Harms		
Filed	:	August 18, 2005		
TC/A.U.	:	1797		
Examiner	:	Denise R. Anderson		
Title	:	FILTER DEVICE		
Docket No.	:	FRG-16153		
Customer No.	:	040854		

REASONS ACCOMPANYING PRE-APPEAL BRIEF REQUEST FOR
REVIEW

Claims 1, 3-4, 7-13 and 15 remain in the application. In the Office action of February 25, 2009, claims 1, 3-4, 7-13 and 14-15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Canadian Patent No. 2422225A1 to Grigo et al. (hereinafter Grigo) in view of Japanese Patent No. 61274799 to Masuda et al. (hereinafter Masuda) and further in view of U.S. Patent 3,997,447 to Breton et al. (hereinafter Breton). Claim 13 also is rejected under 35 U.S.C. §103(a) as being unpatentable over Grigo in view of Masuda alone. Claims 1, 3-4, 7-13 and 15 have been previously rejected in the Office action of August 27, 2008. Applicant respectfully disagrees with the rejection.

Grigo is directed to a filter device rotationally arranged in a container and surrounded by liquid to be filtered. Individual filter elements consist of filter plates which are used to divert the filtrate and which are provided with filters on both sides.

A pump blade wheel is situated within a hollow area and creates a flow in the unclarified liquid between the spaced apart filter elements so as to avoid adhesion of solids to the filter elements.

Masuda is directed to an apparatus for treating waste water that includes a

semipermeable membrane for filtering waste water. The filtrate passes through a membrane support, the hollow part of the membrane support and the hollow part of a rotary shaft to be discharged out of the apparatus as treated water.

Breton is directed to a fluid processing apparatus that includes a filter element that rotates with the fluid being filtered. At predetermined intervals, the fluid medium flow through the filter is reversed or backpulsed.

Regarding independent claim 1, even if the references were combined in the manner proposed by the Examiner, the claimed invention would not result. Claim 1 denotes the position of the elongated hollow body with respect to the hollow space in the center of the filter elements. Specifically, the elongated hollow body is located only within this hollow space in the center of the filter elements. In contrast, Grigo does not teach or suggest the elongated body of claim 1. Masuda teaches only a particular device that includes gas emitting pipes that must be located next to the filter plates. Masuda states that each time the filter plate assembly rotates, the filter plates pass by the gas emitting pipes and this aids with removing material on the plates. Thus, if the teachings of Masuda were combined with those of Grigo, the gas emitting pipes in the combination would still extend next to the plates (now of Grigo) and necessarily out of the hollow space in the center of Grigo. This does not teach or suggest the claimed feature of claim 1, specifically the elongated hollow body of the gassing installation only in the hollow space. Breton does nothing to cure this problem with the proposed combination as Breton teaches nothing regarding the spatial relationship of gas emitting pipes and plates. Breton teaches only a single one of these type of devices (depending on which way the gas is forced through the device). Thus, even if a combination of the references were

appropriate, the invention of claim 1 is not taught or suggested.

Further, the Examiner's combination of the teachings of Grigo and Matsuya, specifically substituting the piping of Matsuya into the Grigo device is not appropriate. The "Examination Guidelines of Determining Obviousness Under 35 U.S.C. §103 in view of the Supreme court Decision in *KSR International Co. v. Teleflex Inc.* 72 Fed Reg. 57526, 57530) requires when substituting one known element for another to obtain predictable results that a finding be made "that one of ordinary skill in the art could have substituted one known element for another and the result of the substitution would have been predictable". Here, the proposed combination could not be done physically by one of ordinary skill in the art or alternatively would result in a non-functional device. As previously stated, Masuda requires that the gas emitting pipes extend to a position adjacent the filter plates, so that when the rotating filter plates pass by the gas emitting pipes, material adhered to the face of the filter plates is removed. The gas emitting pipes of Masuda physically cannot be added in a functional manner to the Grigo device in this manner because the extension of the pipes would interfere with the element 8 in Grigo that is part of the filter plate structure. There is no obvious way for one of ordinary skill in the art to avoid this interference. Thus, the proposed combination the teachings of Grigo and Masuda in this regard is not proper under the Federal Guidelines.

Claims 3-4 and 7-12 depend directly or indirectly from claim 1 and are believed to be allowable for the reasons stated above.

In independent claim 13, the claimed elongated hollow body is located only within the hollow space formed by the filter elements. In independent claim 15, the claimed gas outlet openings are located only in the hollow space formed by the filter

plates. These features are not taught or suggested by the proposed combination of references (as explained earlier with regard to claim 1). Also again, the combination of the Grigo and Masuda references is not believed to be proper.

Regarding the rejection of claim 13 over Grigo in view of Masuda only, the same reasons apply as stated above with regard to the Grigo, Masuda, Breton combination. Namely the feature of the claimed elongated hollow body being located only within the hollow space formed by the filter elements, is not taught or suggested by the combination. Further the proposed combination is improper for the reasons stated above.

The panel's consideration of applicant's reasons presented herein is appreciated.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 18-0160, our Order No. FRG-16153.

Respectfully submitted,

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